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IN THE

Supreme Court of the United States

NOV 13, 2000

ROBERT SHAW, LARRY BEARLEY, MICHAEL MAHONEY, MYRON BEESON, AND RICHARD S. DAY,

Petitioners,

vs.

KEVIN MURPHY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

KENT S. SCHEIDEGGER
CHARLES L. HOBSON
Attorney of Record
Criminal Justice Legal Fdn.
2131 L Street
Sacramento, CA 95816

Phone: (916) 446-0345
Fax: (916) 446-1194
E-mail: cjlf@cjlf.org

Attorneys for Amicus Curiae Criminal Justice Legal Foundation

QUESTIONS PRESENTED

1. Does a prisoner have a right to act as a law clerk, separate from the prisoner's right of access to the courts?

2. May the prison authorities prevent a prisoner from sending a letter containing false allegations against a guard to another prisoner who has been segregated from the general prison population and is charged with assaulting the guard who is the subject of that letter?

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

The present case involves the creation of a new right for prisoners, a right to act as a law clerk separate from their right of access to the courts. Recognizing this right would disrupt

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1. This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   Both parties have given written consent to the filing of this brief.

delicate balance of interests maintained by the prisoner right-of-access cases. This threatens prison security, endangering guards and prisoners alike, and intrudes upon the prison administration's discretion to manage prisons free from judicial influences. The dangerous expansion of the prisoner's right to association threatens public safety and is therefore contrary to the interests that CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

The plaintiff in this case, Kevin Murphy, is a prisoner law clerk in the Montana State Prison. *Murphy* v. *Shaw*, 195 F. 3d 1121, 1123 (CA9 1999). In early 1995 he became aware that Pat Tracy, another inmate, was charged with assaulting Correctional Officer Glen Galle. *Ibid.* Murphy had previously given legal assistance to Tracy and found out that Tracy wanted his help in the assault case. Murphy also knew that Tracy already had appointed counsel for that case. *Ibid.* Since Tracy was in the maximum security wing, they could not directly meet each other. *Ibid.* Murphy, as an inmate in the "high" security classification, was not allowed to visit the maximum security unit, but another inmate clerk with a low security classification was allowed to visit Tracy. Pet. for Cert. 4.

After investigating the matter, Murphy wrote a letter to Tracy in February 1995 in which he asked Tracy not to plead guilty. *Murphy*, *supra*, 195 F. 3d, at 1123. Murphy claimed to have found " 'at least 100 witnesses to testify that Galle is an over zealous [sic] guard who has a personal agenda to punish and harass inmates.' " *Ibid.* The letter further alleged that Officer Galle had made homosexual advances to inmates. *Ibid.* Murphy stated that "[t]here are petitions against" Galle, and that Murphy would be "filing a suit with everyone in Close I and Close II named against him." *Ibid.*

The letter was read by prison officials, who kept it from reaching either Tracy or his attorney. See *ibid.*, and n. 1. As a result of the letter, Murphy was punished by prison officials for

violating prison regulations against insolence and interference with due process hearings. *Id.*, at 1124. The latter finding is implicitly a finding that Murphy's allegations against Officer Galle were false. See *id.*, at 1124, n. 3 (quoting Rule 022); Pet. for Cert. 5. In October 1995, Murphy filed a class action civil rights suit on behalf of all inmate law clerks at the prison, claiming that disciplining him violated the First Amendment, and denied prisoners their right of access to the courts. He also asserted that the prison regulations used to punish him were void on the their face and as applied to legal advice given by law clerks. *Murphy*, *supra*, 195 F. 3d, at 1124. The District Court granted defendant's motion for summary judgment on all claims. *Ibid.* The Ninth Circuit reversed on the First Amendment claim, finding that Murphy was entitled to summary judgment in his favor on this claim. *Id.*, at 1128. The Ninth Circuit did not decide the right of access claim, *ibid.*, while upholding the District Court's dismissal of the facial challenge to the regulations. *Id.*, at 1129. This Court granted Montana's certiorari petition on September 26, 2000.

SUMMARY OF ARGUMENT

While this case is best analyzed under the prisoner's right of access to the courts, that right was not implicated by the acts of the Montana authorities. The prisoner that the plaintiff sought to assist through his letter already had counsel under the Sixth Amendment, a more than adequate alternative to a prisoner law clerk. Furthermore, the administration did not prevent the plaintiff from filing a civil rights suit on behalf of any prisoner allegedly harmed by Officer Galle. There is no right to be a law clerk separate from the right of access to the courts. Since all prisoners had at least adequate access, this right is not implicated.

The First Amendment right of association does not support a right to be a prisoner law clerk. The cases giving civilian organizations the right to find adequate legal representation for

their members have no place in prisons. These cases create a civilian right of access to the courts which is much more extensive than the prison right. Importing these concepts inside the prison walls would disrupt the delicate balance found in the prisoner right-to-access decisions. Finally, these civilian cases are based upon the right of association, the First Amendment right that is the most heavily curtailed within prisons. Since the organizations that are protected under the association right can be banned inside prisons, applying these First Amendment cases to prisons is particularly inappropriate.

The administration did not violate the plaintiff's free speech rights. Although imprisonment does not end prisoners' rights, it necessarily restricts their constitutional protections. The difficulty of running a prison and the important federalism interests in keeping the courts from interfering with prison operation combine to support a very deferential standard for reviewing limitations on prisoners' First Amendment rights. Appropriate deference to prison administrators is achieved by applying the four-part test of *Turner* v. *Safley*.

The Montana authorities satisfied the *Turner* standard. The interest served by their actions, security, is legitimate and content-neutral. Keeping prisoners from using the courts to harass guards through false accusations and keeping prisoners of different security classifications from communication with each other are both rationally related to this interest, thus satisfying *Turner*'s first factor. The second *Turner* factor, the presence of alternate means of communication, is also available, as the plaintiff was not prevented from voicing prisoner complaints against Officer Galle through the prison grievance process or through civil rights litigation. *Turner*'s third factor, the effect that accommodating the plaintiff prisoner would have on the guards and other prisoners, again favors the administration. Accommodating the plaintiff threatens institutional security, placing both guards and other prisoners in danger. The fourth *Turner* factor, the absence of ready alternatives, also favors the administration, since the plaintiff's desire to commu-

nicate with Tracy cannot be accommodated without compromising the prison's interests in preventing guards from being harassed and segregating prisoners of different security classifications.

ARGUMENT

I. The right of access to the courts is not implicated in this case.

This case revolves around prison litigation. The plaintiff was purporting to act as a law clerk when he investigated Officer Galle and when he made the allegations against Galle in his letter to Tracy. The offending letter was intended to influence prison-related litigation and raised the prospect of litigation against the prison. This suit is a class action on behalf of all prisoner law clerks in the plaintiff's prison. Even though this case is seemingly inseparable from prison litigation, the Ninth Circuit deferred analysis under the more straightforward prisoner's right to access to the courts for an esoteric extension of First Amendment case law.

Although this case is best analyzed under the right of access, this right was not implicated by the actions of the Montana authorities. This right is only violated when some prisoner is actually kept from having his or her day in court. Since the disciplinary action kept no prisoner from the courts, the right of access was not implicated.

The right to access is a very limited guarantee that is intended to place minimal burdens on prison authorities. States are not forced into a rigid set of requirements, but instead may meet the constitutional minimums through whatever means they choose. Thus, "a legal access program need not include any particular element we have discussed, and we encourage local experimentation" so long as it satisfies "constitutional standards." *Bounds* v. *Smith*, 430 U. S. 817, 832 (1977). This

combination of deference and flexibility is found throughout the access cases.

So long as the prisoner has some adequate means of presenting his or her claims in court, the constitutional minimum is met. *Johnson* v. *Avery*, 393 U. S. 483 (1969) provides a clear example of this principle. Like the present case, the prisoner in *Johnson* was prevented from giving legal help to a fellow inmate. See *id.*, at 484 (regulation prohibiting inmates from giving legal advice). Even though this Court understood that "writ writers" could menace prison discipline and security, see *id.*, at 488, the Tennessee prison regulation was still unconstitutional because the prisoners had no alternatives for presenting their claims to the courts. *Id.*, at 490. Since there was no "other source of assistance for prisoners" who were incapable of representing themselves in court, the rule was unconstitutional. See *id.*, at 487. Had the state provided an adequate alternative, it could "prohibit mutual assistance among inmates." See *id.*, at 489-490. Representation by an actual attorney is a more than adequate alternative.

The plaintiff in this case was attempting to give legal help to an inmate who was already represented by counsel. See *Murphy* v. *Shaw*, 195 F. 3d 1121, 1123 (CA9 1999). Since the representation concerned a criminal matter, Tracy's assault of Officer Galle, see *ibid.*; Pet. for Cert. 3, the right to access is irrelevant, as Tracy had a Sixth Amendment right to counsel. See *Gideon* v. *Wainwright*, 372 U. S. 335 (1963). This right to counsel does not include a right to the additional assistance of a fellow inmate. While Tracy may represent himself, *Faretta* v. *California*, 422 U. S. 806, 834 (1975), or may retain counsel of his choice, see *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 624-625 (1989), he has no right to the additional assistance of a freelance inmate paralegal of his own choosing. Criminal defendants who accept appointed counsel do not "have a Sixth Amendment right to choose their counsel." *Id.*, at 624. Similarly, the selection of investigators, paralegals, or experts to help prepare the defense must be left to appointed

counsel or the state. The Montana authorities offered Tracy the services of an inmate law clerk with a lower security classification than the plaintiff, but Tracy refused, insisting upon Murphy. See Pet. for Cert. 4. Even though Tracy wanted the plaintiff's legal help, he was not entitled to it.

There is no right to be a writ writer or law clerk independent of insuring a prisoner's adequate access to the courts. Law clerks or any other component of the right to access such as "prison law libraries and legal assistance programs are not ends in themselves, but are only means for ensuring 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.' " *Lewis* v. *Casey*, 518 U. S. 343, 351 (1996) (quoting *Bounds*, *supra*, 430 U. S., at 825). Prisoners have no right "to *discover* grievances, and to *litigate effectively* once in court." *Id.*, at 354 (emphasis in original). There is only "a right to bring to court a grievance that the inmate wished to present . . . . " *Ibid.* "There is, however, no right to be or to receive assistance from a jailhouse lawyer independent of the right of access to the court." *Gassler* v. *Rayl*, 862 F. 2d 706, 707-708 (CA8 1988); see, *Tighe* v. *Wall*, 100 F. 3d 41, 43 (CA5 1996); *Gibbs* v. *Hopkins*, 10 F. 3d 373, 378-380 (CA6 1993) (claim stated only if no alternatives exist; plaintiff must amend complaint to so allege); *Smith* v. *Maschner*, 899 F. 2d 940, 950 (CA10 1990); *Bass* v. *Singletary*, 143 F. 3d 1442, 1446 (CA11 1998) (collecting cases); but see *Kunzelman* v. *Thompson*, 799 F. 2d 1172, 1178, n. 6 (CA7 1986) (open question under the First Amendment right to association).[2]

The right to access is only violated where there has been an actual injury which frustrates or impedes a prisoner's presentation of a nonfrivolous legal claim. See *Casey*, *supra*, 518 U. S.,

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2. There is also a substantial controversy in the circuit courts over whether an inmate has the standing to assert another inmate's right of access. See *Smith*, *supra*, 899 F. 2d, at 950 (collecting cases). Since this issue has not been raised in this case, *amicus* will not discuss it.

at 351. That has not happened here. Tracy had counsel through his Sixth Amendment right, which more than satisfies the prisoner's right to access. Cf. *id.*, at 354. No other prisoner has been kept from litigating Officer Galle's alleged misdeeds. If plaintiff's allegations were true, then the prisoners harmed by Officer Galle may present their claims in an appropriate forum with the help of inmate law clerks like the plaintiff, as was promised in the letter, see *Murphy*, *supra*, 195 F. 3d, at 1123, or through reasonable alternatives. Since the administration's actions have not kept any prisoner from having his day in court, the right of access has not been implicated, let alone violated.

II. Prisoners do not have a First Amendment right to provide legal assistance to other inmates.

The Ninth Circuit avoided the controlling authority under the right to access, see Part I, *supra*, by invoking the First Amendment right to association to support Murphy's claim. See *Murphy* v. *Shaw*, 195 F. 3d 1121, 1125-1126 (CA9 1999). The decision applied circuit precedent, holding that prisoners had a right to assist their fellow inmates in civil rights litigation under the First Amendment right-to-association decisions. See *id.*, at 1126 (citing *Rizzo* v. *Dawson*, 778 F. 2d 527, 531-532 (CA9 1985) (citing *NAACP* v. *Button*, 371 U. S. 415 (1963) and *United Transportation Union* v. *Michigan Bar*, 401 U. S. 576 (1971))). This is an unnecessary and unrealistic extension of the right to association that has no place in the First Amendment. There is no First Amendment right to be a prisoner law clerk.

The First Amendment doctrine invoked by the Ninth Circuit is unnecessary in the prison context because prisoners already have a right of access to the courts. See, *e.g.*, *Bounds* v. *Smith*, 430 U. S. 817 (1977). The right-of-association cases allow organizations to secure adequate legal representation for individuals who otherwise may be without proper counsel to present their grievances to the courts, a different and more

extensive right of access than that afforded prisoners under *Bounds* and *Lewis* v. *Casey*, 518 U. S. 343 (1996). In *NAACP* v. *Button*, 371 U. S. 415 (1963), Virginia had expanded the definition of "capper" in order to hinder the NAACP in getting clients for civil rights actions. See 371 U. S., at 423-426. What mattered was not the act of soliciting clients, but the fact that the NAACP's litigation gave a voice to people who otherwise would not be heard. In this context,

> "litigation is not a technique of resolving private differences; it is a means for achieving the lawful objections of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts." *Id.*, at 429.

The Virginia rule was *therefore* unconstitutional because its vagueness and potential for selective enforcement endangered the ability of people to protect their civil rights through the courts. See *id.*, at 435-436.

The *Button* rule extends to nonpolitical litigation. In a series of cases, this Court upheld the rights of unions to secure counsel for their members in workplace-related personal injury and workers' compensation actions under state or federal law. See *Brotherhood of Railroad Trainmen* v. *Virginia Bar*, 377 U. S. 1, 8 (1964); *Mine Workers* v. *Illinois Bar Assn.*, 389 U. S. 217, 218, 225 (1967); *United Transportation Union* v. *Michigan Bar*, 401 U. S. 576 (1971). Although these decisions went beyond *Button*'s premise of giving a voice to the politically powerless, they still centered on the theme of securing effective representation for the organization's members. As this Court stated in *Trainmen*, "Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries, cf. *Gideon* v. *Wainwright*, 372 U. S. 335 [(1963)], and for them to associate together to help one another to preserve and enforce their rights under federal laws cannot be condemned as a threat to legal ethics." 377 U. S., at 7. *Mine*

Workers, relying on *Button* and *Trainmen*, also held that the union could retain counsel to represent its individual members in private actions. See 389 U. S., at 223-224. Finally, in *United Transportation Union*, the Court stated "The common thread running through our decision in *NAACP* v. *Button*, *Trainmen*, and *United Mine Workers* is that collective activity undertaken to obtain *meaningful access to the courts* is a fundamental right within the protection of the First Amendment." 401 U. S., at 585 (emphasis added); accord, *In re Primus*, 436 U. S. 412, 426 (1978).

These First Amendment cases are not necessary in a prison context already governed by its own right-to-access jurisprudence, or when the prospective client already has counsel. If a prisoner is prevented from presenting claims attacking his or her sentence or the prison conditions to a court, then the prison right-of-access cases are violated, and the judiciary can intervene to correct the violation. See Part I, *supra*. Therefore the First Amendment right-of-association cases could only be relevant in situations where the prisoner does not have a right to access under *Casey* or the other prisoner rights cases. While the applicability of one constitutional guarantee does not preempt other amendments, see *Soldal* v. *Cook County*, 506 U. S. 56, 70 (1992), the delicate balance struck in the prisoner rights cases should not be disrupted through the intrusion of these civilian right-to-association cases. When one constitutional provision already provides a standard for reviewing a particular government action, that standard should not be subverted by invoking some other part of the Constitution to create a different standard. Cf. *Conn* v. *Gabbert*, 526 U. S. 286, 293 (1999) (the Fourth Amendment, not the Fourteenth, provides the standard to analyze the reasonableness of a search).

The right to access provides an excellent example of the delicate balance in prison law. The civilian First Amendment cases provide for a relatively broad right, allowing organizations considerable flexibility to secure for their members

effective and affordable representation by counsel for any litigation involving a member. See *Mine Workers*, *supra*, 389 U. S., at 223 (not limited to political claims); *United Transportation Union*, *supra*, 401 U. S., at 585 (effective and affordable representation). The prisoner right is far more limited. It is not a right to effective litigation, but merely the ability to present grievances to the courts. *Casey*, *supra*, 518 U. S., at 354. The grievances covered by this right are similarly limited in comparison to the First Amendment right.

> "In other words, *Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Id.*, at 355 (emphasis in original).

Letting the right-to-association cases inside the prison walls disrupts the careful balance struck by this Court in *Casey* and its other prisoner access-to-the-courts cases, because the broad association right and the limited prisoner right are incompatible. Therefore no other circuit follows this expansive interpretation of the right to association. See *Bass* v. *Singletary*, 143 F. 3d 1442, 1446 (CA11 1998) (listing cases).

The *Button* line of cases is particularly inappropriate to apply to prisons because they are based upon the right to association.

> "Perhaps the most obvious of the First Amendment rights that are necessarily curtailed by confinement are those associational rights that the First Amendment protects outside of prison walls. The concept of incarceration itself entails a restriction on the freedom of inmates to associate with those outside of the penal institution. Equally as

obvious, the inmate's 'status as a prisoner' and the operational realities of a prison dictate restrictions on the associational rights among inmates." *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 125-126 (1977).

The types of organizations which can help their members get access to the courts in the civilian world can be banned inside prisons. While labor unions were the beneficiaries of the *Trainmen*, *Mine Workers*, and *United Transportation Union* cases, such organizations are prohibited inside prisons. See *id.*, at 126, n. 4. Prison authorities can prevent the formation "of a functioning organization of the inmates within the prison" through such means as banning inmate solicitation or group meetings by prisoners. See *id.*, at 129. Since a prison can forbid "concerted group activity" by prisoners, see *ibid.*, the right to association decisions have no place inside the prison. These cases are simply irrelevant to prison life and do not allow a court to circumvent the limits placed on the prisoner's right of access to the courts by this Court in *Casey*.

III. The administration did not violate the plaintiff's free speech rights.

Although the right to association does not apply to this case, the First Amendment is still implicated. Preventing the plaintiff's note from reaching Tracy and punishing him for sending it does impact his free speech rights. Although the "[p]rison walls do not form a barrier separating prison inmates from the Constitution," *Turner* v. *Safley*, 482 U. S. 78, 84 (1987), it is equally true that "[t]he fact of confinement and the needs of the penal institution impose limitations on constitutional rights, including those derived from the First Amendment, which are implicit in incarceration." *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 125 (1977). The limits on prisoner rights come from many sources. "The limitations on the exercise of constitutional rights arise

from both the fact of incarceration and from valid penological objectives—including deterrence of crime, rehabilitation of prisoners, and institutional security." *O'Lone* v. *Estate of Shabazz*, 482 U. S. 342, 348 (1987). A chief purpose of prison is to deter crime by punishing those convicted of crimes. See *Rhodes* v. *Chapman*, 452 U. S. 337, 352 (1981). If a prison is to punish, then the prisoners' rights must be curtailed. Since security is also a paramount concern in prisons, see *Jones*, *supra*, 433 U. S., at 132, great deference is accorded to prison officials in security matters. See, *e.g.*, *Thornburgh* v. *Abbott*, 490 U. S. 401, 407-408 (1989). Finally, federalism also limits federal judicial supervision of state prisons in the name of prisoner rights. See *Turner*, *supra*, 482 U. S., at 85. "The federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the States." *Meachum* v. *Fano*, 427 U. S. 215, 229 (1976).

Respecting federalism and "the 'inordinately difficult undertaking' that is modern prison administration," *Thornburgh*, *supra*, 490 U. S., at 407 (quoting *Turner*, *supra*, 482 U. S., at 85), this Court applies a deferential standard to prison regulations that implicate a prisoner's First Amendment rights. The analysis, which was first formally recognized in *Turner*, relies on four factors. First, courts look to whether there is "a 'valid logical connection' between the prison regulation and the legitimate government interest put forward to justify it." *Turner*, *supra*, 482 U. S., at 89 (quoting *Block* v. *Rutherford*, 468 U. S. 576, 586 (1984)). Second, the availability of alternate means of exercising the right is evidence of the regulation's reasonableness. *Id.*, at 90. Third "is the impact [that] accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally . . . . Finally, the absence of ready alternatives is evidence of the reasonableness of the prison regulation." *Ibid.*

The first and most important factor in the *Turner* test, the action's rational relation to legitimate interests, is satisfied in

this case. The Court of Appeals found that the regulations invoked to punish the plaintiff satisfied the first *Turner* factor. *Murphy* v. *Shaw*, 195 F. 3d 1121, 1126-1127 (CA9 1999). As to the actual decision to intercept the letter and apply the regulations to the plaintiff, the Ninth Circuit effectively dispensed with the first *Turner* factor, as it " 'balance[d] the importance of the prisoner's infringed right against the importance of the penological interest served by the rule." *Id.*, at 1127 (quoting *Bradley* v. *Hall*, 64 F. 3d 1276, 1280 (CA9 1995)). It found the plaintiff's First Amendment interest in acting as a law clerk high,[3] while the government's security interest weak, as other means were available to guard its interests. *Ibid.* Finding "that the 'logical nexus' here between the governmental interest and the application of the rules to law clerk correspondents is weak,' " the Ninth Circuit labeled the administration's actions " 'an exaggerated response' " that tipped the balance of interests in the plaintiff's favor with respect to Turner's first factor. See *ibid.*

This contradicts the standards set forth by this Court for reviewing the decisions of prison authorities. While there is a necessary balancing between the prisoners' rights and government interests, like security, that balance is struck with deference to the great burdens placed on prison administrators. "Acknowledging the expertise of these [prison] officials and that the judiciary is 'ill-equipped' to deal with the difficult and delicate problems of prison management, this Court has afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world." *Thornburgh*, *supra*, 490 U. S., at 407-408. That balance is maintained by applying each part of the *Turner* test in its entirety. *Turner*'s first part simply addresses whether there is an appropriate government interest to justify the regulation and the

3. This premise is incorrect, as there is no First Amendment right to act as a law clerk. See Part II, *supra*.

regulation's logical relationship to that interest. See *Turner*, *supra*, 482 U. S., at 89-90. No balancing is involved. The balancing of interests is achieved by applying the remaining three *Turner* factors, where the various interests and the costs of their accommodation are weighed. The Ninth Circuit's rebalancing effectively equates the interests of the prisoner and the administration, contrary to the deference that this Court accords to those who run our prisons.

This deference does not end with the regulation, but applies equally to the administration's enforcement of its regulations. Although this Court applies the *Turner* standard to general prison regulations, as opposed to their specific application, the case for deference is even stronger when addressing the more specific decisions of prison administrators. Judges should not micromanage prisons. This Court has taken pains to "reaffirm our refusal, even where claims are made under the First Amendment to 'substitute our judgment on . . . difficult and sensitive matters of institutional administration,' *Block* v. *Rutherford*, 468 U. S. 576, 588 (1984), for the determinations of those charged with the formidable task of running a prison." *O'Lone*, *supra*, 482 U. S., at 353. If the courts are to be kept from running the prisons, then the individual decisions of administrators must be given at least the same deference as for the regulations that they write.

The government interest, security, is unquestionably legitimate and neutral. See *Thornburgh*, *supra*, 490 U. S., at 415. The actions in response to the plaintiff's letter are also rationally related to maintaining this interest. In addition to protecting prisoner rights, the courts are also used by prisoners as a means to harass or intimidate prison personnel. Prisoners "have essentially nothing to lose, including time, by prosecuting such actions [prisoner initiated suits], and they may gain something even if it is nothing but the satisfaction of harassing, inconveniencing and annoying those who have them in charge." *Wycoff* v. *Brewer*, 572 F. 2d 1260, 1267 (CA8 1978), overruled on other grounds, *Williams* v. *Delo*, 49 F. 3d 442, 446 (CA8

1995). Therefore prisoners use the threat of litigation in an attempt to extort favors from the guards or administrators or to deter them from enforcing discipline. See *id.*, at 1266; Doumar, Prisoners' Civil Rights Suits: A Pompous Delusion, 11 Geo. Mason U. L. Rev. 1, 18-19 (1988) (quoting *Wycoff* and noting it is consistent with the experience of most federal judges). If guards and administrators are afraid to enforce the rules for fear of legal retaliation, then discipline is sure to erode, threatening both guards and prisoners. See Engel & Rothman, The Paradox of Prison Reform: Rehabilitation, Prisoners' Rights, and Violence, 7 Harv. J.L. & Pub. Pol'y 413, 431-433 (1984).

The plaintiff was, in effect, punished for making false accusations against a guard. See *supra*, at 2-3. The state certainly can protect guards from intentionally false accusations made by prisoners. The fact that the plaintiff chose another prisoner's litigation as the vehicle for his harassment does not change the analysis. Since the litigation was an attempt to punish an inmate for assaulting a guard,[4] it is reasonable to see the letter as an attempt to harass Officer Galle for reporting the assault, which threatens to intimidate guards from making such reports in the future. This does not have to be the most likely interpretation in order to satisfy the *Turner*'s reasonableness standard. Instead, "the logical connection between the regulation and the asserted goal [cannot be] so remote as to render the policy *arbitrary or irrational*." *Turner*, *supra*, 482 U. S., at 89-90 (emphasis added).

The Montana authorities were neither arbitrary nor irrational when they sought to protect Officer Galle. Attacking the victim or witness is one way to deter the reporting or prosecution of criminal acts. Harassing guards also hurts morale. The privilege of being a law clerk is not a right to harass guards.

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4. Tracy pled guilty to assaulting Officer Galle. See *Murphy* v. *Shaw*, 195 F. 3d 1121, 1123, n. 1 (CA9 1999).

The state also has a substantial interest in controlling the communications between prisoners. Cf. *Turner*, *supra*, 482 U. S., at 92 (correspondence between prisoners in different institutions "facilitates the development of informal organizations that threaten" security). When the authorities placed Tracy in maximum security, they separated him from high security prisoners such as the plaintiff. This physical isolation can reasonably include limits on communication, particularly when it involves an assault on a guard. Indeed, the authorities did not prevent all law clerks from helping maximum security inmates like Tracy, but only those in high security, such as the plaintiff, because the security risk was too great. See Pet. for Cert. 4. The prison, in accordance with its policy, instead sent a low security inmate law clerk to help Tracy. Tracy rejected this offer, insisting upon the plaintiff. See *ibid.* The prison was not arbitrarily denying legal aid to Tracy. Instead, it rationally sought to preserve security, and therefore satisfied the first *Turner* factor.

The availability of other means of communication, *Turner*'s second factor, see 482 U. S., at 90, reinforces the conclusion that the authorities acted reasonably. The plaintiff sought to expose Officer Galle's alleged misdeeds and to provide Tracy with this information to aid his defense against the charge of assaulting Officer Galle. A better way to expose a guard's actual misdeeds is not by a letter to another prisoner, but through the prison's grievance mechanism or federal civil rights litigation, as the plaintiff promised to do in his letter to Tracy. See *Murphy*, *supra*, 195 F. 3d at 1123. These are legitimate alternate means of communication under *Turner*. See *Jones*, *supra*, 433 U. S., at 130, n. 6. Since Montana has not foreclosed either option, the plaintiff could still expose Officer Galle's alleged wrongs. Of course, the plaintiff would actually have to come up with proof before a grievance hearing or a court.

If the plaintiff had utilized the proper forums to voice his complaints, Tracy's defense team could have found any

information worth discovering. Prisoner grievances against Officer Galle would be placed in his personnel file, which competent counsel could obtain through discovery. Counsel could then use his or her professional judgment to evaluate whether the complaints warranted further investigation, and advise Tracy on its potential impact on his defense. The existence of these other channels heavily favors the reasonableness of the administration's actions. "Where 'other avenues' remain available for the exercise of the asserted right, see *Jones* v. *North Carolina Prisoners' Union*, *supra*, at 131, courts should be particularly conscious of the 'measure of judicial deference owed to corrections officials . . . in gauging the validity of the regulation.' " *Turner*, *supra*, 482 U. S., at 90 (quoting *Pell* v. *Procunier*, 417 U. S. 817, 827 (1974)).

Turner's third factor, the impact of accommodating the plaintiff on the guards and the other prisoners, see *ibid.*, again supports deference. "In the necessarily closed environment of the correctional institution, few changes will have no ramifications on the liberty of others or on the use of the prison's limited resources for preserving institutional order." *Ibid.* The present case follows this pattern, even though it involves a single disciplinary action. If one prisoner can get away with using the prison mails and prison litigation to malign a guard, others will follow in the plaintiff's footsteps. Besides harassing the guards, such practices can make them less willing to confront inmates and enforce discipline, thus endangering prisoners and guards.

Finally, *Turner*'s fourth factor, "the absence of ready alternatives," see 482 U. S., at 90, also supports reasonableness. It is important to understand that the cost of accommodation must truly be minimal in order to be considered as an alternative. Prisons are not required to employ the least restrictive means available when limiting a prisoner's speech. See *ibid.* Instead this factor favors the prisoner only "if an inmate claimant can point to an alternative that fully accommodates the

prisoner's rights at *de minimis* cost to valid penological interests . . . . " *Id.*, at 91.

Such accommodation is not feasible in this case. The threat to institutional security was posed by the heart of the letter, the plaintiff's allegations against Officer Galle and his attempt to influence Tracy's litigation through this information. Any attempt to "shield" Officer Galle from this information, cf. *Murphy*, *supra*, 195 F. 3d at 1128, is therefore impossible without compromising the full accommodation of the plaintiff's speech. Nor can Officer Galle be immunized from effects of the letter if it is not read by him. At best, he will not be allowed to know that a prisoner is making false, highly prejudicial allegations about him. More importantly, the prison's interest in preventing high and maximum security inmates from communicating with each other, see *supra*, at 17, is compromised by creating a legal advice exception to this rule, whether or not Officer Galle is shielded from the content of the plaintiff's letter.

Prisons are self-contained universes with their own special rules. Regulations that would "raise grave First Amendment concerns outside the prison context," *Thornburgh*, *supra*, 490 U. S., at 407, can be an entirely reasonable accommodation of the prison's special needs. The decision to stop the letter and punish the plaintiff rationally advanced prison security, left him with alternative means of communication, protected the general population of prisoners and guards from a ripple effect, and had no alternative without significant cost to the prison system. It is not necessary for this Court to agree with what was done in order to uphold the administration. "It is enough to say that they have not been conclusively shown to be wrong" that the letter threatened prison security. See *Jones*, *supra*, 433 U. S., at 132. The Montana administrators have more than satisfied this low standard. To hold them to any different standard would threaten to substitute the judgment of courts for the judgment of those charged with running the prisons.

CONCLUSION

The decision of the Ninth Circuit Court of Appeals should be reversed.

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Respectfully submitted,

CHARLES L. HOBSON

Attorney for Amicus Curiae
Criminal Justice Legal Foundation